IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 34 OF 2007

1. Smt. Nutan Damodar Prabhu,
Major of age, teacher,
Wife of Damodar S. Prabhu.

2. Shri Damodar S. Prabhu,
Major of age, Income Tax Consultant,
S/o. Prabhu,
both residents of 2nd Floor,
Padmavati Towers, 18th June Road,
Panaji-Goa. .... Petitioners

V/s

1. Ravindra Vassant Kenkre,
Also known as Ravindra Kenkre,
Major of age,
S/o late Vasant Kenkre,
R/o Fonduvem, Ribander,
Ilhas-Goa.

2. S T A T E
Represented by the Public Prosecutor. .... Respondents

Mr. A.D. Bhobe, Advocate for the Petitioners/accused.
Mr. J. Dias, Advocate for Respondent No.1/Complainant.
Ms. W. Coutinho, Public Prosecutor for Respondent No.2.

CORAM : N.A. BRITTO, J.

DATE : 2nd NOVEMBER, 2007

JUDGMENT :

Does the learned JMFC, Margao has territorial jurisdiction to try the Complainant's complaint filed under Section 138 of the Negotiable Instruments

Act, 1881?

2. That is a short question for consideration before this Court, in this petition filed by the accused under Section 482 of the Code (Code of Criminal Procedure, 1973) challenging the order dated 13/08/2007 of the learned JMFC, Margao.

3. Heard learned Counsel on behalf of both parties.

4. The facts are hardly in dispute. The accused have only disputed the Complainant's allegation that the Complainant had advanced loan in cash of Rs. 63 lakhs at Margao. There is no dispute that the Complainant as well as the accused reside within the jurisdiction of the JMFC, Panaji. The subject cheques bearing No. 24112 dated 16/11/2004, and bearing No. 24111 dated 19/11/2004, for Rs. 30 lakhs each were given by the accused to the Complainant drawn on Bank of Goa, Ltd., Santa Cruz Branch, which is also situated within the jurisdiction of the JMFC, Panaji. The said two cheques were crossed and the Complainant deposited the same for payment in his account with State Bank of India, at Margao but were returned dishonoured by the Bank of the accused with the endorsement that the funds were insufficient. The Complainant sent a notice dated 1/12/2004 through his Advocate, having his office at Margao within the

jurisdiction of JMFC, Margao but at the same time making it clear that it was being sent on behalf of the Complainant who was the resident of Ribander, within the jurisdiction of JMFC, Panaji. Paras 3 and 4 of the notice read as follows:-

> 3. My client has instructed me to bring to your attention this notice for making payment of the said cheques, Rs. 30 lakhs and Rs. 30 lakhs respectively, within fifteen days of receipt of this notice, failing which you shall be liable to be prosecuted under Section 138 of the Negotiable Instruments Act.
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> 4. In the event the said payment is not made by you within the said period of fifteen days, as referred to in the preceding para, my client will initiate and prosecute legal proceedings against you, which will be wholly and entirely at your risk as towards the costs and the consequences thereto.

5. After the accused came to know of the judgment of this Court in ***Ahuja Nandkishore Dongre V/s State of Maharashtra & Anr. (2006 (6) AIR Bom R 201)*** the accused filed an application dated 20/04/2007 stating that the learned JMFC, Margao before whom the Complainant-Respondent No.1 had filed the said case had no jurisdiction to entertain the same in the light of the aforesaid judgment and therefore appropriate orders may be passed in the said case. The said application came to be rejected by the learned JMFC, Margao by order dated 13/08/2007. In rejecting the said application, the learned JMFC referred to the case of ***K. Bhaskaran V/s Sankaran Vaidhyan Balan & Anr. (AIR 1999***

S.C. 3762) and observed that the Apex Court had stated that if five acts were done in five different localities any one of the Courts exercising jurisdiction in one of the five local areas can become the place of trial for the accused under Section 138 of the Act. The learned JMFC also noted that the subject cheques were account payee cheques and therefore they were intended to be paid at the place where the accused had an account and since the complainant had presented the subject cheques for payment in the State Bank of India, Margao Branch, the JMFC, Margao had jurisdiction to try the case. The learned JMFC also noted that the demand notice was issued from Margao and therefore the case was covered by the principles stated in ***K. Bhaskaran*** (supra).

6. Learned Counsel on behalf of the accused, contends that the legal notice did not state as to where the amount of the cheques was required to be paid and in such a situation the payment had to be made at the address of the Complainant i.e. within the jurisdiction of the JMFC, Panaji. Learned Counsel further contends that this is a case where both the Complainant as well as the accused were residents within the jurisdiction of the JMFC, Panaji and the subject cheques were drawn by the accused on Bank of Goa, Santa Cruz Branch situated within the jurisdiction of the JMFC, Panaji and in such a situation, the Complaint could not have been filed before the JMFC, Margao. Learned Counsel further contends that the judgment of the Apex Court in ***K. Bhaskaran***

(supra) was explained by this Court in ***Ahuja Nandkishore Dongre*** (supra) and therefore it was required to be followed by the learned JMFC, Margao.

7. On the other hand, the learned counsel on behalf of the Complainant contends that the learned JMFC, Margao rightly considered that unlike in the case of ***Ahuja Nandkishore Dongre*** (supra) cheques issued in this case were crossed cheques and therefore the payment had to be made where the accused had an account, as rightly held by the learned JMFC. Learned Counsel further contends that the notice of demand was issued from Margao, within the jurisdiction of learned JMFC, Margao and therefore the accused were required to make the payment in the office of the advocate at Margao, within the jurisdiction of the learned JMFC, Margao. As per the learned Counsel of the accused the ratio of the judgment of this Court in ***Ahuja Nandkishore Dongre*** (supra) was clearly inapplicable to the case of the Complainant and therefore the learned JMFC, Margao was justified in rejecting the application filed on behalf of the accused.

8. The judgment of the Hon'ble Supreme Court in ***K. Bhaskaran*** (supra) was explained by this Court in the case of ***Ahuja Nandkishore Dongre*** (supra) and therefore the learned JMFC had no option but to follow the judgment of the Apex Court as explained by this Court. As far as the statutory notice is

concerned, part of which has been reproduced herein above, and as stated by this Court in ***Ahuja Nandkishore Dongre*** (supra), the notice did not show as to where the payment was required to me made. Moreover, as observed by this Court in the case of ***Ahuja Nandkishore Dongre*** (supra) the advocate had not demanded the payment for him but for the client and since the client's address was given in the notice, as in the case at hand also, the payment obviously was not required to be made to the advocate at Margao but was required to be made to the Complainant at his residence given in the said notice. As far as the crossed cheques are concerned, which is put forward as a feature to distinguish the ratio of ***Ahuja Nandkishore Dongre*** (supra), in my view, the same does not make any difference. This Court stated thus:

> "A cheque is negotiable instrument and by appropriate endorsement and delivery it can be negotiated. If instead of the Courts at the place where the bank on which the cheque was drawn, the Courts at the place where the cheque was presented were to have jurisdiction, drawers of the cheque would be exposed to an unforeseen risk. When a person issues a cheque to another, he intends to make payment to that another, for a consideration which he has received at the bank on which the cheque is drawn. That other, may, in turn, negotiate the cheque in favour of third person for a liability which that other may have to discharge towards such third person. The drawer of the cheque cannot be said to have foreseen that, by such negotiation, his cheque would land at place far away from the place at which it was meant to be paid, making him liable to be hauled up in a Court at a place where the cheque was presented by the holder in due course.
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> While creating an offence punishable under Section 138 of

> the Negotiable Instruments Act, the parliament has not changed the whole scheme of the Act. Under Section 6 of the Act, a cheque is still defined at a bill of exchange, drawn on a specified banker. The "drawee" is the person directed to pay under Section 7, and Section 61 requires that a bill of exchange has to be presented to "the drawee" (& not to any banker), and if the bill is directed to a drawee at a particular place, it must be presented at that place. Section 72 makes the requirement in respect of a cheque clear and lays down as under:
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> "72. Presentment of cheque to charge drawer:- (Subject to the provisions of Section 84) a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer."
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> Since all these provisions are left intact a cheque has to be presented to the drawee bank at the place mentioned on the cheque.
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> Practice of presenting a cheque to payee's or holder's own banker does not make such banker "the drawee". Such a banker merely undertakes to present the cheque on behalf of the holder to the drawee bank for clearance. Such a banker acts as agent of holder and not agent of the drawee bank. This can be clear from the fact that it is the holder who has to bear the expenses in clearing the cheque and not the drawee bank. Even between different branches of the same bank, branch at which holder has an account does not become agent of the drawee branch for accepting the cheque unless the cheque is one marked as payable "at par" at all branches of the bank."

It is therefore obvious that since the subject cheques were issued by the accused and were payable at the Bank within the jurisdiction of JMFC, Panaji, it is the JMFC, Panaji who would have jurisdiction to try the offence under Section 138 of the Act. As observed by this Court, though the Complainant may have accounts at several places, it does not follow that the Complainant could file

complaint at the place where he had an account because jurisdiction would have to be gathered from the place where money was intended to be paid.

9. There is another angle from which the controversy could be viewed. Section 177 of the Code of Criminal Procedure, 1973 provides that *every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed*. In other words the offence is to be tried by the Court within whose local jurisdiction it is committed. Section 178 of the said Code provides that

> (a) When it is uncertain in which of several local areas an offence was committed, or
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> (b) where an offence is committed partly in one local area and partly in another, or
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> (c) where an offence is a continuing one, and continues to be committed in more local areas than one, or
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> (d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

The word "ordinarily" appearing in Section 177 of the Code means a regular, normal, customary, usual and not exceptional. The exceptions are contained in Section 178 onwards. The Apex Court, speaking through five learned Judges, in ***Narumal V/s State of Bombay (AIR 1960 SC 1329)*** has stated that the word "ordinarily" in Section 177 of the Code means "except where provided

otherwise in the Code". The rule laid down in Section 177 of the Code is one of general application and governs all Criminal trials held under the provisions of the Code. The word "shall" as used in Section 177 is indicative of the mandatory nature of the provision and all offences which do not fall within the purview of special provisions contained under the exceptions should be tried by a Court within the local limits of whose jurisdiction the offence is committed. The Apex Court in several of its decisions including ***K. Bhaskaran*** (supra) and ***M./s. Kusum Ingots & Alloys Ltd. V/s Pennar Peterson Securities Lts. & Ors. (AIR 2000 S.C. 954)*** has stated that an offence under Section 138 is completed after linking several acts and they are as follows:

(a) Drawing of the cheque by a person on an account maintained by him with a banker, for payment to another person from out of that account for the discharge in whole or in part of any debt or liability;

(b) Presentation of the cheque by the payee or the holder in due course to the bank;

(c) Returning of the cheque unpaid by the drawee bank for want of sufficient funds to the credit of the drawer or any arrangement with the banker to pay the sum covered by the cheque.

(d) Giving of notice in writing to the drawer of the cheque within 15 days of the receipt of information by the payee from the bank regarding the return of the cheque as unpaid demanding payment of the cheque amount; and

(e) Failure of the drawer to make payment to the payee or the holder in due course of the cheque, of the amount covered by the cheque within 15 days of the receipt of the notice.

10. The above acts or requirements for the ultimate completion of an offence under Section 138 of the Act, can be culled out from Section 138 of the Act itself. Here it may be noted that none of the said acts in themselves constitute an offence but it is only the last act i.e. failure of the drawer to make the payment within 15 days of the receipt of the notice of the amount due on the cheque which completes the commission of offence. If the payment is made within the said period of notice then there is no offence committed but in case of failure alone that the offence gets completed. Even if the payment is made on the 16th day, the same is not sufficient to come out of the rigours of section 138 of the Act. At the cost of repetition it may be stated that the offence under Section 138 of the Act gets completed or committed by an accused in all respects upon the failure by the accused to comply with the notice of demand. As stated by the Apex Court in the case of ***Rajneesh Aggarwal V/s Amit J. Bhalla (AIR 2001 S.C. 518)***, so far as criminal complaint is concerned, once the offence is committed, any payment made subsequent thereof, will not absolve the accused of the liability of the criminal offence, though in the matter of awarding the sentence, it may have some effect on the Court trying the offence. The Hon'ble Supreme Court has also stated that the object of issuing notice indicating the factum of dishonour of cheque, is to give an opportunity to the drawer to make the payment within 15 days, so that it will not be necessary for the payee to proceed against in any criminal action, even though the Bank dishonoured the

cheques. As already stated, the statutory notice in question does not specify the place where the accused was required to make the payment of the amount due on the cheques after they were dishonoured and in any event as observed by this Court in ***Ahuja N. Dongre*** (supra) the advocate had not demanded the payment for him but for the client and since the client's address was given in the notice, the payment was obviously required to be made to the Complainant at his residence which was within the jurisdiction of the learned JMFC, Panaji. Needless to observe the common law principle that the debtor should seek the creditor and pay the debt to him at the place where he resides can be invoked and applied in such cases as well. In fact such a principle was followed in ***L.N. Gupta & Ors. V/s Smt. Tara Mani (AIR 1984 Delhi 49)***. In other words, the accused after having received the statutory demand notice, having failed to make the payment to the Complainant's at his address where he permanently resides, within the jurisdiction of JMFC, Panaji, committed the offence within the jurisdiction of JMFC, Panaji and it is the JMFC, Panaji, who has to try the same. To reiterate, the money due on the cheques which were dishonoured were required to be paid by the accused to the Complainant at his residence and that is within the jurisdiction of learned JMFC, Panaji.

11. In the above view of the matter as well, the learned JMFC, Margao could not have taken cognizance of the complaint filed by the Complainant. After the

judgment of the Apex Court in ***K. Bhaskaran*** (supra) was explained by this Court in ***Ahuja Nandkishore Dongre*** (supra) the learned JMFC ought not to have proceeded with the trial as she had no territorial jurisdiction to try the same.

12. In view of the above, the petition deserves to succeed. The learned JMFC, Margao is hereby directed to transfer the complaint filed by the Complainant to the C.J.M., Panaji. The learned C.J.M., Panaji will allot the same to any of the J.M.F.C. at Panaji to be tried in accordance with law. Needless to observe, the learned JMFC, Panaji will now proceed with the said complaint from the stage at which it is pending.

N.A. BRITTO, J.

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